

## Food and Nutrition Service, USDA

## § 279.8

### § 279.6 Legal advice and extensions of time.

(a) *Advice from Office of the General Counsel.* If any request for review involves any doubtful questions of law, the Benefit Redemption Division shall obtain the advice of the Department's Office of the General Counsel.

(b) *Extensions of time.* Upon timely written request to the designated reviewer by the firm requesting the review, the designated reviewer may grant extensions of time if, in the designated reviewer's discretion, additional time is required for the firm to fully present information in support of its position. However, no extensions may be made in the time allowed for the filing of a request for review.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 356, 59 FR 29714, June 9, 1994. Redesignated and amended at 68 FR 41053, July 10, 2003]

## Subpart B—Judicial Review

### § 279.7 Judicial review.

(a) *Filing for judicial review.* Except for firms disqualified from the program in accordance with § 278.6(e)(8) of this chapter, a firm aggrieved by the determination of the designated reviewer may obtain judicial review of the determination by filing a complaint against the United States in the U.S. district court for the district in which the owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. The complaint must be filed within 30 days after the date of delivery or service upon the firm of the notice of determination of the designated reviewer in accordance with § 279.5(e); otherwise the determination shall be final.

(b) *Summons and complaint.* Service of the summons and complaint in any such action shall be made in accordance with the rules of civil procedure for the U.S. district courts. The copy of the summons and complaint required by the rules to be served on the agency whose order is being attacked shall be sent by using any delivery method as long as the method provides evidence of delivery to the person in charge of the applicable regional office of FNS.

(c) *Trial de novo.* The suit in the U.S. district court or in the State court, as the case may be, shall be a trial de novo by the court in which the court shall determine the validity of the questioned administrative action. If the court determines that the administrative action is invalid, it shall enter a judgment or order which it determines is in accordance with the law and the evidence.

(d) *Stay of action.* During the pendency of any judicial review, or any appeal therefrom, the administrative action under review shall remain in force unless the firm makes a timely application to the court and after hearing thereon, the court stays the administrative action after a showing that irreparable injury will occur absent a stay and that the firm is likely to prevail on the merits of the case. However, permanent disqualification actions taken in accordance with § 278.6(e)(1) of this chapter shall not be subject to such a stay of administrative action. If the disqualification action is reversed through administrative or judicial review, the Secretary shall not be liable for the value of any sales lost during the disqualification period.

[Amdt. 136, 43 FR 43279, Sept. 22, 1978, as amended by Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 356, 59 FR 29714, June 9, 1994; 64 FR 23174, Apr. 30, 1999. Redesignated and amended at 68 FR 41053, July 10, 2003; Amdt. 397, 70 FR 72354, Dec. 5, 2005]

### § 279.8 Implementation of amendments relating to administrative and judicial review.

(a) *Amendment No. 257.* The program change to § 279.3(a)(4) shall be effective September 14, 1984.

(b) *Amendment No. 274.* The program change of *Amendment No. 274* at § 279.10(d) is effective retroactively to December 23, 1985.

(c) *Amendment No. 334.* The program changes made to part 279 by this amendment are effective February 1, 1992.

[Amdt. 257, 49 FR 32539, Aug. 15, 1984; Amdt. 262, 49 FR 50598, Dec. 31, 1984, as amended by Amdt. 274, 51 FR 18752, May 21, 1986; Amdt. 334, 57 FR 3913, Feb. 3, 1992. Redesignated at 68 FR 41053, July 10, 2003]